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IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. 297.

KIEFER-STEWART COMPANY, *Petitioner,*

v.

JOSEPH E. SEAGRAM & SONS, INC., SEAGRAM DISTILLERS CORPORATION, THE CALVERT DISTILLING COMPANY and CALVERT DISTILLERS CORPORATION, *Respondents.*

RESPONSE TO PETITION FOR REHEARING.

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RESPONSE TO PETITION FOR REHEARING.

In answering the petition for rehearing, we will limit ourselves to showing, for the convenience of the Court, that all of the three points relied upon by respondents were fully presented both on the original briefs and oral argument and have been held by unanimous decision of this Court to be without merit. We will deal with these points seriatim as they appear in the respondents' petition for rehearing.

I.

The trial court affirmatively instructed the jury that in order to find for the plaintiff they must find a conspiracy

to fix prices and, negatively, that in the absence of such a conspiracy to fix prices the jury must find for the defendant. Point I of the respondents' petition is a claim that the Court should have added a statement "that the acquisition of the Calvert stock was *not illegal*" in order to avoid possible confusion. Respondents made the identical point on pages 31 and 32 of their original brief, and argued it orally. (See pages 50 and 51 of the transcript of oral argument.)

II.

Point II consists of two arguments. The first is the claim that certain evidence showing respondents' productive capacity and sales was inadmissible. The admissibility of this evidence (clearly relevant to the coercive power of the restraint imposed by respondents and also to damages) was argued by the respondents in their original brief, page 34, and answered in petitioner's main brief, page 43.

The second claim under Point II is an alleged error in the admission of expert accounting evidence based on petitioner's books.* The same contention was urged in respondents' brief, page 35. It was answered in petitioner's brief, pages 42-43, by showing (1) that the testimony was admissible under Indiana decisions and federal rules and (2) that when the court made inquiry whether the respondents insisted on the production of the original books respondents did not insist but instead gave only equivocal answers.

III.

Point III consists of the claim that the "lost profits which have been awarded petitioner unquestionably include profits lost by reason of not having had respondents' merchandise to sell at . . . illegal prices." (Pet. for Rehearing, p. 11.) This argument was made on pages 33 and 34 of

* The trial court barred any use by petitioner of the stamp records of the Indiana Alcoholic Beverage Commission (R. 124).

respondents' original brief under heading (3). The evidence does not permit such a conclusion, and in response to a question by Mr. Justice Black, respondents admitted that they had not pressed the "detail" of any showing with respect to damages which⁶ would have substantiated this contention. (Transcript of oral argument, p. 54.)

CONCLUSION.

It is therefore respectfully urged, since all issues presented by the petition for rehearing have already been fully argued and disposed of, that such petition be denied.

Respectfully submitted,

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